

ELTON ELLIOTT ET AL.

IBLA 84-334

Decided August 9, 1984

Appeal from decision of the California State Office, Bureau of Land Management, rejecting application for hardrock prospecting permit. CA 14000.

Vacated and remanded.

1. Mineral Lands: Prospecting Permits

An application for a prospecting permit for reserved minerals in former public domain the surface of which is patented to the State of California, is not properly rejected pursuant to 43 CFR Subpart 3564 where it appears the application was not provided to the surface manager for comment prior to adjudication as required by 43 CFR 3564.4.

APPEARANCES: Elton Elliott, pro se, and for appellants.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Elton Elliott, Carmen A. Rath, and Elliott C. Stuart have appealed from a decision dated January 20, 1984, by the California State Office, Bureau of Land Management (BLM), rejecting their hardrock prospecting permit application CA 14000 for dolomite limestone, filed May 2, 1983, for lands within T. 15 S., R. 8 E., San Bernardino meridian. The lands lie within the Anzo Borrego State Park patented to the State of California with a reservation of minerals. The decision appealed from states that pursuant to 43 CFR 3564, "application CA 14000 is subject to rejection since it was for a prospecting permit rather than for a lease." 1/ BLM's decision also observes that a lease may be rejected where the surface owner objects for reasons determined by BLM to be satisfactory. See 43 CFR 3564.4. This was apparently considered to be a foregone conclusion, based upon prior rejections which are discussed and compared to appellants' application. The case file contains a

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1/ This observation is not clear. If it is intended to convey the meaning that a prospecting permit is not the proper instrument by which the reserved mineral may be developed, the question arises as to what form of application would have been proper. The BLM case file indicates that other applications for prospecting permits were treated as facially sufficient so as to entitle them to review by the surface manager and later adjudication on the merits by BLM.

staff study which considers prior objections made by the California Department of Parks and Recreation to other prospecting applications seeking to explore park lands. The record establishes, however, that the State agency which administers the park was not informed of the existence of appellants' application, and did not object to the applications made by appellants. No notice was given of the application as is required by 43 CFR 3564.4, had the application been rejected for reasons stated by the park manager. Despite this circumstance, this second stated reason for the rejection of appellants' application considers the prior objection by the State to be continuing, and to also require rejection.

In their statement of reasons appellants assert that large quantities of dolomite limestone may be present on the lands and that extraction would cause minimal surface damage and would not adversely affect the desert ecosystem. Appellants state that besides dolomite limestone there may be other minerals present in commercial quantities. Additionally, appellants state, "This claim has been patented since 1926." In the prospecting permit application, they indicate the claims were located on May 12, 1926. In supplementary notes filed with the application, appellants assert that they have done yearly assessment work on the claims and filed fees with the county of San Diego. BLM's resources plat, however, shows the entire area to be patented to the State of California with a reservation of minerals to the United States. The minerals in such lands are subject to disposal under provisions of 43 CFR Subpart 3564.

[1] The applicable regulation, 43 CFR 3564.4, provides with respect to lands in the park patented to the State, that notice of applications to develop the reserved minerals must be given to the State:

The authorized officer of the proper office will notify the surface owner or his authorized representative of each application received. Notice of any proposed offer of lands for lease will also be given to the surface owner prior to publication thereof. Should the surface owner object to the leasing of any tract for reasons determined by the authorized officer to be satisfactory the application will be rejected or the offer of the land for lease will be withheld.

43 CFR 3564.4. The regulatory requirement is clear and mandatory; notice of this specific application must be given to the State prior to adjudication. The adjudication of other, similar, applications in the past may properly be considered when evaluating the entire application. However, consideration of past case records may not be substituted for the notice and opportunity to comment which the regulation requires. 2/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed

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2/ It is noted that the determination required to be made in this case is the ultimate responsibility of BLM. 43 CFR 3564.4. The authorized BLM officer must make the final decision concerning approval or rejection of the application "for reasons determined by the authorized officer."

from is vacated and the case record remanded to BLM for appropriate action consistent with this decision.

Franklin D. Arness  
Administrative Judge

We concur:

C. Randall Grant, Jr.  
Administrative Judge

R. W. Mullen  
Administrative Judge.

